



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 29, 2011

Ms. Cathy Boeker
Executive Administrator of External Affairs
Blinn College
902 College Avenue
Brenham, Texas 77833

OR2011-10898

Dear Ms. Boeker:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 426025.

Blinn College (the "college") received a request for any request for proposals ("RFP") for janitorial or custodial services and supplies, any bids received in response, and related bid tabulations and contracts during a specified time period. You claim that the submitted information is excepted from disclosure under section 552.104 of the Government Code. You also explain that the submitted information may contain third parties' proprietary information subject to exception under the Act. Accordingly, you notified GCA Services Group; MBM McLemore Building Maintenance, Inc.; and SSC Service Solutions of this request for information and of their right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have considered the exception you claim and reviewed the submitted information.

You raise section 552.104 of the Government Code, which protects from required public disclosure "information that, if released, would give advantage to a competitor or bidder." Gov't Code § 552.104. The purpose of section 552.104 is to protect the interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* Open Records Decision No. 592 (1991). Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not

except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

We note that the submitted information relates to a contract that the college has already awarded. You have provided general assertions that release of the submitted information would harm the interests of the college and other third parties. However, you do not inform us, and the information at issue does not reflect, the college is engaging in any particular competitive bidding situation. Further, you have not sufficiently explained the applicability of section 552.104 to the information you seek to withhold under this exception. *See* Open Records Decision No. 509 at 5 (1998) (because costs, bid specifications, and circumstances would change for future contracts, assertion that release of bid proposal might give competitor unfair advantage on future contracts was entirely too speculative to withhold information under predecessor statute). Consequently, we conclude the college may not withhold any of the submitted information under section 552.104 of the Government Code.

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, we have not received any correspondence from any of the interested third parties. Thus, these companies have not demonstrated that they have a protected proprietary interest in any of the submitted information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, because we have received no arguments from any of the third parties, the college may not withhold any of the submitted information on the basis of these companies' proprietary interests.

We note some of the submitted information is subject to section 552.136 of the Government Code.¹ Section 552.136 provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b). This office has determined insurance policy numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining "access device"). Upon review, we find the submitted information contains bank account, routing, and insurance policy numbers.

¹The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Accordingly, the college must withhold the information we have marked under section 552.136 of the Government Code.² The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 426025

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. Joe Scully
GCA Services Group
1007 Gibbs Crossing
Coppell, Texas 75019
(w/o enclosures)

²We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies, authorizing the withholding of ten categories of information, including bank account, routing, and insurance policy numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

Mr. Curtis McLemore
MBM McLemore Building Maintenance, Inc.
110 Fargo Street
Houston, Texas 77006-2014
(w/o enclosures)

Mr. John Donovan
SSC Service Solutions
1845 Midpark Road, Suite 201
Knoxville, Tennessee 37921
(w/o enclosures)